

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DUNCAN J. McNEIL

Petitioner,

VS.

UNITED STATES OF AMERICA,
ET AL.

Respondents.

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NO. 3-05-CV-1284-B

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Duncan J. McNeil, an inmate in the Spokane, Washington County Jail, has filed a motion to proceed *in forma pauperis*. For the reasons stated herein, the motion should be denied.

I.

This is an unspecified civil action brought against the United States of America and its officers and agencies, including the district and bankruptcy courts for the Northern District of Texas, the U.S. Marshal's Service, the FBI, and the IRS, to compel defendants "to perform [their] duties." Attached to plaintiff's complaint is a stipulated order on liability and damages entered by a federal court in the Eastern District of Washington. Although his written submissions are difficult to decipher, it appears that plaintiff wants this court and the federal agencies named in his complaint to enforce a foreign judgment against his former employer.

II.

The court *sua sponte* notes that plaintiff was allowed to proceed *in forma pauperis* in at least five prior civil actions filed while he was incarcerated. All five cases were dismissed as frivolous

or malicious. *See McNeil v. Spokane County Jail*, No. 04-371-AAM (E.D. Wash. Nov. 9, 2004); *McNeil v. Gregoire*, No. 03-372-AAM (E.D. Wash. Nov. 9, 2004); *McNeil v. Miller*, No. 04-378-AAM (E.D. Wash. Nov. 9, 2004); *McNeil v. Tighe*, No. 04-379-AAM (E.D. Wash. Nov. 9, 2004); *McNeil v. Williams*, No. 04-380-AAM (E.D. Wash. Nov. 9, 2004).¹ Therefore, under the Prison Litigation Reform Act, plaintiff may not proceed *in forma pauperis* unless he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff does not allege, nor do the facts of this case suggest, that he meets this standard. Consequently, this case is barred under the PLRA.

RECOMMENDATION

Plaintiff's application to proceed *in forma pauperis* should be denied. Plaintiff should be ordered to pay the \$250.00 statutory filing fee within 30 days after this recommendation is adopted by the district judge. If he fails to do so, this case should be dismissed without further notice.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

¹ In addition, plaintiff has been deemed a "vexatious litigant" in the Eastern District of Washington, the United States Bankruptcy Court for the Central District of California, and the Spokane County Superior Court. *See McNeil v. Brandt*, No. C05-1043-RSL (W.D. Wash. Jun. 14, 2005).

DATED: June 28, 2005.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE